

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 229/RC/2015

Sub: Application under Section 79(1) (c) and 79(1) (k) read along with 79(1)(f) of the Electricity Act, 2003 read with Regulation 21 of the Central Electricity Regulatory Commission (Sharing of Transmission Charges & Losses in Inter State Transmission) Regulations, 2010 along with Regulation 111 (Inherent Powers) and Regulation 115 (Power To Remove Difficulties) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulation 2(1) (j) and Regulation 6(1) (d) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

Petitioner : Power Grid Corporation of India Limited

Respondents : Lanco Babandh Power Private Limited and others

Date of hearing : 8.12.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Parties present : Shri Gopal Jain, Senior Advocate for petitioner
Ms. Swapna Seshadari, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri A.M. Pavgi, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Sanjey Sen, Senior Advocate, Monnet, JIPTL, LANCO and GMR
Shri Deepak Khurana, Advocate, Lanco
Shri Vikas Mishra, Advocate, Lanco
Shri Mahawir Singh Jhala, LANCO
Shri Sakya Singh, Advocate, Essar
Shri Molshree Bhatnagar, Advocate, Essar
Shri Alok Shankar, Advocate, GKEL

Record of Proceedings

Learned senior counsel for Monnet Ispat, JIPTL, LANCO and GMR referred to the prayers of the petition and submitted as under:

(a) The petitioner has impleaded 15 parties as respondents to the present petition. Admittedly, the said respondents are separate entities and have no connection or relation with each other at all. The reliefs sought against the respondents arise out of separate acts and transactions pertaining to each and every respondent and there is no commonality in this regard. It is settled position of law that the petitioner cannot seek common relief on the basis of the non-specific generalized common pleadings against all the respondents and the petitioner is required to file a separate petition. The petition does not disclose any cause of action against the respondents in as much as there are no specific allegations against the respondents. Therefore, the petition deserves to be dismissed on the basis of principle of demurrer.

(b) The main issue of the petitioner and relief sought is that the respondents be directed to comply with the provisions of the BPTA and TSA executed between the petitioner and the respondents. The relief sought cannot be subject matter of the Regulatory Compliance. The petitioner is seeking specific performance of the BPTA and TSA. The obligation under the BPTA and TSA are contractual in nature and the issue of liability of opening of letter of credit under the BPTA and TSA cannot be decided by way of Regulatory Compliance Application. The principle of natural justice requires the petitioner to submit the 'contract' executed under Regulation 13 of the Sharing Regulations, 2010. However, the petitioner has not placed on the record the copies of the BPTA and TSA of each respondent.

(c) The breach of the provisions of BPTA/TSA signed with the respondents needs to be established by the petitioner. The compliance, if any, pertaining to the provisions of BPTA/TSA has to be considered with regards to the terms of the said BPTA/TSA.

(d) The Commission has to access compliance of provisions of BPTA/TSA qua the facts and circumstances of the respondents in each case. Therefore, since the present proceedings seek compliance as defined under Regulation 2 (1) (j) of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012,

(e) The liability to establish payment security mechanism *inter- alia* flows from Para 25.2 (iv) of the Detailed Procedure notified under the Connectivity Regulations, as also from Para 3.6 of the Billing Collection and Disbursement Procedure (hereinafter 'BCD Procedure') framed under the CERC (Sharing of Inter State Transmission Charges & Losses) Regulations, 2010. The Model Transmission Service Agreement incorporates 'BCD Procedure' under the contract.

(f) Since the occasion to establish payment security mechanism has not arisen as per the BPTA/TSA, the identified transmission system has not been commissioned and the LTA has not been operationalised, the petitioner cannot seek compliance of 'BCD Procedure'.

(g) The petitioner has sought to maintain revolving letter of credit in terms of 13 (6) of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. The same cannot be invoked once the contract has come into existence.

(h) In the present case, the petitioner is seeking blanket direction to cancel LTA of the respondents is highly arbitrary and is against the natural justice. Further, the petitioner needs to address each case separately, with facts pertaining to each case and thereafter, seek adjudication of dispute under respective LTA/BPTA's.

(i) Learned senior counsel relied upon the judgment of the Hon`ble Supreme Court in Bachhaj Nahar Vs. Nilima Mandal [(2008) 17 SCC 197] and submitted that the Hon`ble Supreme Court has held that without pleading and an opportunity of hearing to the defendant, no amount of evidence can be looked into to grant any relief.

2. Learned senior counsel for the petitioner submitted as under:

(a) There is no dispute that there is 'contract' and the TSA is identical in all cases.

(b) The Model Transmission Service Agreement and the BCD Procedure were given effect from the Commission's order dated 29.4.2011.

(c) The respondents are default signatories of the TSA. The effect of model TSA was analysed by the Commission vide order dated 1.5.2013 in Petition No. 196/2011 and observed that once the TSA is notified by the Commission after due consultative process, there should not be any objection from the DICs to signing TSA.

(d) The Commission in order dated 31.5.2010 in Petition No. 233/MP/2009, granted regulatory approval for the development and execution of certain identified transmission systems for evacuation of power from various generation projects. The respondents in the present petition were parties in the said petition and had given their consent to bear the transmission charges.

(e) Under the Model Transmission Service Agreement and clause 12.1 of the Billing, Collection and Disbursement of Transmission Charges, the DICs and the ISTS licensees are required to abide the detailed "Billing, Collection and Disbursement procedure" of CTU as approved by the Commission and it shall be construed as part of the agreement.

(f) Learned senior counsel submitted that the copies of the BPTA/TSA would be placed on record, if required.

3. After hearing the learned senior counsels for the parties, the Commission directed the petitioner to file the following by 15.12.2015 with an advance copy to the respondents who may file their response, by 17.12.2015.

- (a) Copies of the TSAs entered into between the petitioner and the respondents.
- (b) Action taken in each case with all correspondences, communications and meetings held between the petitioner and the respondents.
- (c) Details of the entities who have abandoned the project.
- (d) Details of entities who have sought extension of time for execution of the project.
- (e) Details of entities who have set up their projects but intended to surrender the LTA either for seeking LTA to the other region or on account of non-execution of PPAs.

4. The Commission directed to list the petitions for hearing on 18.12.2015.

By order of the Commission
Sd/-

(T. Rout)
Chief (Law)